

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1) MADAME HABYARIMANA;	)	
in her own capacity and on behalf of the estate of the	)	
deceased President of Rwanda,	)	
JUVÉNAL HABYARIMANA;	)	
	)	Case No. CIV-10-437-W
2) MADAME NTARYARMIRA;	)	
in her own capacity and on behalf of the estate, of the	)	
deceased President of Burundi,	)	
CYPRIEN NTARYARMIRA;	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
1) PAUL KAGAME, President of the Republic	)	
of Rwanda,	)	
	)	
Defendant,	)	

**MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

1. Pursuant to Rule 15 of the Federal Rules of Civil Procedure and LCvR7.1(k), and the Order of this Court of June 23, 2011, Plaintiffs having filed simultaneously herewith a First Amended Complaint, move this Court for leave to file a First Amended Complaint against Defendant Paul Kagame in the above captioned cause.

2. Plaintiffs commenced this action by filing their Original Complaint in this Court on April 29, 2010 [See Complaint, Document, No. 1]. The Complaint requested that Plaintiffs be granted a judgment for compensatory and punitive damages for the wrongful death, torture, pain and suffering, loss of income and consequential damages arising from the assassination of President Habyarimana and President Ntaryarmira by Paul Kagame on

or about April 6, 1994, plus post-judgment interest, attorney's fees and costs.

3. Plaintiff's counsel secured issuance of a Summons in the normal course of events [See Summons, Doc. No. 2].

4. Plaintiffs moved for Default Judgment on February 8, 2011 and Clerk of Court duly entered a Default Judgment against Defendant on February 11, 2011.

5. Defendant Kagame filed Motions to Dismiss, to Strike Default and Amend Caption on March 9, 2011. This Court filed an Order on June 23, 2011 granting Defendant Kagame's Motion to amend the caption and dismiss other defendants, but denying other aspects of the Motion.

6. In accordance with this Order, Plaintiffs respectfully request leave to file their First Amended Complaint, all other aspects of the Complaint remaining unchanged from the original Complaint.

7. With respect to the initial service of the original Complaint, additional facts which may be relevant, after the Court's June 23, 2011 Order, to which counsel for Plaintiff attest are:

a. Both counsel Kerns and Erlinder attest, as officers of the Court, that when Prof. Erlinder was accused by President Kagame's Prosecutor of criminal conduct for being one of the attorneys filing this case by Mr. Kagame's prosecutor in the Prosecutor's Office in Kigali, Rwanda, on or about June 3, 2010, the prosecutor in question had a physical copy of the Complaint in his possession.

b. This physical copy of the original Complaint could have come into his

possession in one of only three ways after May 1, 2010, when Mr. Kagame was served with the original Complaint in Oklahoma City:

1. During the ½ hour or so that the Kagame retinue had the original Complaint in its possession at Oklahoma Christian University, before it was returned by the Secret Service Agent with instructions from Ambassador Kimonyo that it be sent to Mr. Kagame's residence (apparently after having referred to Rule 4), it was copied by defendant Kagame, or his staff;
2. A copy of the Complaint that counsel Erlinder had thrust through the window of a waiting SUV (which was recorded on video-camera) was retained by defendant or his staff;
3. A copy of the Complaint was downloaded from the District Court website prior to the June 3, 2010 questioning and filing of the criminal charges against Plaintiff's counsel in Rwanda by defendant or his staff.

8. The First Amended Complaint and Motion for Leave to File the First Amended Complaint are served in accordance with Rule 5 on Defendant's Counsel, William A. Edmonson, the only method of service possible ("If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party").

9. In light of the attorney-client relationship that exists between Defendant Kagame, and his counsel, direct service of the same Complaint would be as violative of Rule 5 and

professional norms. However, Plaintiff's counsel is in the hands of the Court and will proceed pursuant to the Order of the Court, as required by Rule 5, and requesting a reasonable extension of time to do so, should the Court Order a mode of service other than that to which counsel for Defendant is limited under Rule 5.

**RELIEF REQUESTED**

10. Counsel for Plaintiff prays this Honorable Court grant leave to file the First Amended Complaint and such other relief as to the Court seems necessary and proper.

Dated:

Respectfully submitted,

s/ John P. Zelbst

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**CERTIFICATE OF MAILING**

I hereby certify that on August 2, 2011, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a notice of electronic filing to the following ECF registrants:

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